

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE R. CHICON-DELEON, :
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Plaintiff, :
: 20-CV-5643 (JMF)
-v- :
:
TRANS CONTINENTAL TRUCKING, LLC and :
YASHPAL AMARSINGH, :
:
Defendants. :
:
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MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, United States District Judge:

As discussed during the telephone conference held earlier this afternoon, Defendant's motion *in limine* to preclude the testimony of Francisco Veras, *see* ECF No. 33, is DENIED. In considering whether to preclude a witness from testifying based on a failure to comply with a discovery deadline, courts consider (1) the party's explanation for its failure to disclose, (2) the importance of the evidence, (3) the prejudice suffered by the opposing party, and (4) the possibility of a continuance. *See Patterson v. Balsamico*, 440 F.3d 104, 117 (2d Cir.2006). Here, the first factor cuts in favor of Defendants because, although Mr. Veras's employer may not have been known to *counsel* earlier, it was known to *Plaintiff* himself. But, in view of the fact that Mr. Veras was already deposed and the fact that he was an eyewitness to the accident at issue, the other factors weigh strongly in favor of permitting Mr. Veras to testify. Accordingly, the motion is DENIED. As discussed, Plaintiff shall respond to the other portions of Defendants' motion *in limine*, *see* ECF No. 33, at 5-9, by **Monday, July 12, 2021**.

SO ORDERED.

Dated: June 30, 2021
New York, New York


JESSE M. FURMAN
United States District Judge